

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

ED HARTMAN, a sole proprietorship doing
business as OLYMPIC MARIMBA
RECORDS, ED HARTMAN PERCUSSION
STUDIO and THE DRUM EXCHANGE;
JANET HODGIN and MICHAEL HODGIN,
a partnership doing business as KIDS
NORTHWEST; and MICHAEL A.
SPAFFORD, a sole proprietorship doing
business as "SPIKE" MAFFORD
PHOTOGRAPHY, individually and on behalf
of a class of Washington residents similarly
situated,

Plaintiffs,

v.

COMCAST BUSINESS
COMMUNICATIONS, LLC, a Pennsylvania
corporation, COMCAST CORPORATION, a
Pennsylvania corporation and its subsidiaries
and affiliates, MARKETOUCH MEDIA,
INC., a Texas corporation,

Defendants.

NO. C10-00413 RSL

**ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT, NOTICE TO
CLASS MEMBERS, AND
SCHEDULING FINAL APPROVAL
HEARING**

(Clerk's Action Required)

1 This matter came before the Court on the basis of Plaintiffs' Motion for Preliminary
2 Approval of Class Action Settlement, Notice to Class Members, and Scheduling a Final
3 Approval Hearing has come before this Court (the "Motion for Preliminary Approval").
4 Plaintiffs and defendants Comcast Business Communications, LLC and Comcast Corporation
5 ("Comcast") have agreed, subject to final approval by this Court following notice to the
6 Settlement Class, to settle this action upon the terms and conditions set forth in the Release and
7 Settlement Agreement (the "Settlement Agreement") dated July 21, 2011 (Docket # 76). The
8 Court has reviewed the Settlement Agreement (including all exhibits attached thereto), the
9 Motion for Preliminary Approval, as well as all files, records, and proceedings to date in this
10 matter, and the Court hereby orders as follows:

11 1. Except as specifically noted below, the Court for purposes of this Order
12 Preliminarily Approving Class Action Settlement, Notice to Class Members, and Scheduling a
13 Final Approval Hearing (the "Preliminary Approval Order") adopts the definitions set forth in
14 the Settlement Agreement, unless otherwise defined herein.

15 2. Neither this Preliminary Approval Order, nor the Settlement Agreement, nor any
16 of the terms or provisions thereto, nor any of the negotiations or proceedings connected with
17 any of them, shall be referred to, offered as evidence, or received in any pending or future civil,
18 criminal or administrative action or proceeding, except in a proceeding to enforce the terms of
19 the Settlement Agreement.

20 3. Certification of Settlement Class. Pursuant to the Settlement Agreement and for
21 purposes of this settlement only, the Court certifies the following Settlement Class pursuant to
22 Fed. R. Civ. P. 23(b)(3):

23 All Washington businesses, including businesses operated out of
24 residences, who received one or more commercial solicitations
25 from Comcast directly or through its agents through the use of an
26 automatic dialing and announcing device during the period of
February 19, 2006, through the entry of the Preliminary Approval
Order.

1 This certification is effective and binding only with respect to proceedings related to or
2 encompassed by the Settlement Agreement. If the Settlement Agreement terminates for any
3 reason, this certification shall be vacated by its terms and the Action shall revert to the status
4 with respect to class certification that existed before execution of the Settlement Agreement. In
5 such event, Comcast's stipulation to this Settlement Class in conjunction with the Settlement
6 Agreement shall not be construed as or raise any presumption of or inference of a concession or
7 admission as to the propriety of certification of this class or any other.

8 The Court hereby finds and concludes, for settlement purposes of this settlement only,
9 that the proposed Settlement Class satisfies all of the requirements for certification under
10 Rule 23.

11 4. Appointment of Class Representatives and Class Counsel. Solely for purposes
12 of effectuating the proposed Settlement Agreement, the Court finds the proposed class
13 representatives, Plaintiffs above, to have claims typical of absent class members belonging to
14 the Class and to be adequate representatives of those Class Members ("Class Representatives").
15 The Court hereby appoints Plaintiffs to serve as the Class Representatives. The Court further
16 finds the firms of Williamson & Williams, Terrell Marshall Daudt & Willie PLLC, and
17 Gallagher Law Offices, PS to have experience and expertise in prosecuting class actions such
18 as this Action and hereby appoints this firm as Class Counsel.

19 5. Preliminary Approval of Proposed Settlement. The Court has reviewed the
20 terms of the Settlement Agreement, as well as the papers submitted in connection with the
21 Motion for Preliminary Approval, and all other relevant files, records and papers in this action.
22 The proposed Settlement Agreement provides substantial monetary relief to the Settlement
23 Class. The terms of the Settlement Agreement will be implemented by an independent Claims
24 Administrator. The Court further concludes that the proposed Settlement Agreement is the
25 result of extensive, arm's-length negotiations between Plaintiffs and Comcast and was executed
26 after Class Counsel had investigated the claims and evaluated the strengths and weaknesses of

1 the Plaintiffs' claims. Based on all of these factors, the Court concludes that the proposed
2 settlement has no obvious defects and is within the range of possible settlement approval, and
3 that the Class Notice proposed herein is appropriate, and the Court hereby preliminarily
4 approves the Settlement Agreement as fair, reasonable and adequate.

5 6. Approval of Class Notice and Notice Plan. The Parties have submitted for this
6 Court's approval a proposed form of Class Notice, a postcard, and proposed to send by mail the
7 Class Notice to all Class Members. The Court finds and concludes that the form of the Class
8 Notice and its direct mailing constitute the best practicable notice under the circumstances and
9 is as likely as any other form of notice to apprise Class Members of the Settlement Agreement,
10 the certification of the Settlement Class for purposes of settlement, and Class Members' rights
11 to opt-out, object, and/or make a claim. The Court further finds and concludes that Class
12 Notice, and the agreement to mail it to Class Members is reasonable, that it constitutes due,
13 adequate and sufficient notice to all Class Members entitled to receive notice, and that it meets
14 the requirements of due process, satisfying Fed. R. Civ. Proc. 23 and the Washington State and
15 United States Constitutions.

16 Within fourteen (14) days after the entry of this Preliminary Approval Order, or as soon
17 as reasonably practicable thereafter, the Parties shall cause the Class Notice, in substantially the
18 same form as Exhibit B of the Settlement Agreement, to be mailed by the Claims Administrator
19 by first-class mail, postage prepaid, as required by Settlement Agreement. Commencing with
20 the mailing of the Class Notice, electronic copies of the Notice, Settlement Agreement, Claim
21 Form, and relevant deadlines for Class Members shall be made available online at a website
22 maintained by the Claims Administrator.

23 7. Petition for Fee Award/Incentive Award. No later than fifty four (54) days after
24 date of entry of this Preliminary Approval Order, Class Counsel and Plaintiffs shall file their
25 petition for a fee award and incentive award and cause a copy of the papers filed in support of
26 the petition to be made available on the website maintained by the Claims Administrator.

1 8. Deadline for Submitting Claim Forms. All Class Members who do not timely
2 exclude themselves from the proposed Settlement Agreement will be bound by the Settlement
3 Agreement. Class Members who do not exclude themselves may submit a Claim Form in
4 accordance with the terms of the Settlement Agreement. The Claim Form must be fully
5 completed, signed under penalty of perjury and submitted in accordance with the terms of the
6 Settlement Agreement within the sixty (60) day period commencing with the Class Notice Date
7 for a Class Member to be considered by the Claims Administrator for approval to receive any
8 Settlement Award.

9 9. Final Approval Hearing. The Court hereby schedules a final approval hearing
10 on December 1, 2011, at 8:30 a.m., at the U.S. District Court for the Western District of
11 Washington, 700 Stewart Street, Courtroom 15106, Seattle, Washington, 98101 (“Final
12 Approval Hearing”) at which time the Court will determine whether the Settlement Agreement
13 is fair, reasonable and adequate and should be finally approved. At that time, the Court will
14 determine whether to grant any incentive award or fee award requested by the Class
15 Representatives or Class Counsel. The Final Approval Hearing may be postponed, adjourned,
16 or continued by order of the Court without further notice to the Settlement Class. At or after
17 the Final Approval Hearing, the Court may enter a Final Judgment, substantially in the form of
18 Exhibit C to the Settlement Agreement, that will adjudicate the rights of the Class Members.

19 10. Papers in Support of Settlement. The Parties to the Settlement Agreement may
20 file any responses to objections by Class Members, if any, and additional papers in support of
21 final approval of the proposed settlement no later than ten (10) calendar days prior to the
22 Fairness Hearing.

23 11. Right to Exclude. Any Class Member may choose to be excluded from the
24 Class by signing and returning a request for exclusion postmarked no later than October 28,
25 2011, as set forth more fully in the Class Notice and Paragraph 9 of the Settlement Agreement.
26 Any Class Member who submits a valid request for exclusion shall have no rights under the

1 Settlement Agreement. All Class Members who do not request exclusion shall be bound by
2 this Court's orders, including without limitation any Final Approval Order or Final Judgment
3 entered in this Action.

4 12. Objections and Appearances. Any Class Member may object to the fairness,
5 reasonableness or adequacy of the Settlement Agreement or the petition for the fee award and
6 incentive award. Class Members may do so either on their own or through counsel hired at
7 their own expense. Any Class Member who wishes to object to the Settlement Agreement or
8 petition for the fee award and incentive award must file with the Court a written statement of
9 objection, along with any other supporting materials, papers or briefs that he or she wishes the
10 Court to consider, no later than sixty (60) days after notice is mailed and must by that same
11 date serve such papers by first-class mail on the following counsel for the Parties:

12 Roblin Williamson, Esq.
13 WILLIAMSON & WILLIAMS LLP
14 17253 Agate St. NE
Bainbridge Island, Washington 98110

15 Peter S. Ehrlichman, Esq.
16 DORSEY & WHITNEY LLP
701 Fifth Avenue, Suite 6100
Seattle, Washington 98101-7043

17 Any Class Member who has served an objection may appear at the Final Approval Hearing,
18 either in person or through counsel hired at the Class Member's expense, and object to the
19 fairness, reasonableness or adequacy of the Settlement Agreement. Any Class Member who
20 wishes to be heard at the Final Approval Hearing must also file with the Court a written notice
21 of intent to appear by no later than sixty (60) days after notice is mailed, and must by that same
22 date serve such notice of intent to appear on the counsel for the Parties at the addresses listed
23 above. The Parties shall file any responses to Class Members' objections, if any, no later than
24 November 8, 2011.

25 13. Effect of Failure to Approve the Settlement Agreement. In the event the Court
26 or any other court: (a) disapproves, sets aside, or modifies the Settlement Agreement, (b)

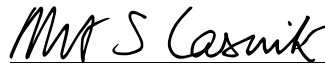
declines for any reason to enter or give effect to an order preliminarily approving the Settlement Agreement, (c) declines for any reason to enter or give effect to a final order approving the Settlement Agreement and entering final judgment; or (d) holds that any final order approving the Settlement Agreement and entering judgment, or any judgment entered pursuant thereto, should in any material part be overturned or modified in any material way, then the Parties shall use their best efforts to effectively repair deficiencies in order to obtain Court approval, provided that such best efforts shall not be deemed to require Comcast to pay any additional sums than is provided herein, or receive any less percentage of funds retained as provided in Paragraph 4 herein. In the event such efforts are unsuccessful, and after the passage of sixty (60) days from the date of the Court's actions outlined in Paragraph 13 (a)-(d) herein, then the Settlement Agreement shall become null and void, the Action shall be deemed to revert to its status as of the date and time immediately prior to the execution of the Settlement Agreement, and the parties shall jointly move that any and all orders entered pursuant to the Settlement Agreement be vacated and shall proceed with the Action as if the Settlement Agreement had never been executed; provided, however, that in the event that the parties, within fifteen (15) days of any such action of any court, jointly elect to appeal from or otherwise seek review or reconsideration of such court action, the Settlement Agreement shall not be deemed null and void until such time as such court action becomes final after any proceedings arising directly or indirectly from the parties' appeal(s) or other attempt(s) to have such court action reversed, withdrawn, or overturned.

14. Stay of Proceedings. All discovery and other pretrial proceedings between Plaintiffs and Comcast in this action are hereby stayed and suspended until further order of the Court, except such actions as may be necessary to implement the Settlement Agreement and this Preliminary Approval Order.

1 15. Defendant Comcast is further directed to file a statement by August 19, 2011,
2 indicating that notice to the appropriate government officials has been provided as required by
3 the Class Action Fairness Act, 28 U.S.C. § 1715(b).
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5 IT IS SO ORDERED.

6 Dated this 29th day of July, 2011.
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9 The Honorable Robert S. Lasnik
10 United States District Judge
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